



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE OF NEW HAMPSHIRE, DEPARTMENT
OF SAFETY, DIVISION OF STATE POLICE

Appellant

v.

NEW HAMPSHIRE TROOPERS ASSOCIATION

and

STATE EMPLOYEES' ASSOCIATION OF NEW
HAMPSHIRE, INC., LOCAL 1984, SEIU

Appellees

CASE NO. P-0754

DECISION NO. 92-147

(Supplemental Decision
to Decision No. 90-109)

BACKGROUND

On January 23, 1990, the State Employees' Association of New Hampshire, SEIU Local 1984 (SEA) filed a modification seeking to establish a separate bargaining unit of all sworn state police personnel, namely, troopers, corporals, sergeants, lieutenants, captains and majors. By filing of February 6, 1990, the State of New Hampshire (State), as employer, objected to the creation of such a unit (formerly part of a larger unit of employees at the Department of Safety) because it would allegedly include both supervisory and non-supervisory personnel in violation of RSA 273-A:8, II. On August 7, 1990, this Board rendered Decision No. 90-69 which granted the foregoing modification petition "subject to an election in accordance with the requirements of 273-A." That decision, as it pertained to the need for an election, prompted a Motion for Reconsideration from SEA on August 17, 1990. That motion was denied by Decision No. 90-82 on August 28, 1990.

On September 17, 1990, the New Hampshire Troopers Association filed a Petition for Certification for "all sworn State Police personnel up to and including the rank of lieutenant." An Order of Election issued September 18, 1990 followed by a Notice of Evidentiary Hearing issued on September 24, 1990 for October 5, 1990. That hearing resulted in the issuance of Decision No. 90-109 on October 17, 1990 which created a bargaining unit of "all sworn

state police officers up to and including the rank of sergeant." The New Hampshire Troopers Association (Troopers) was certified as the bargaining agent on October 18, 1990 as the result of a mail ballot election, the results of which were tabulated on that date.

On November 6, 1990, both the State and the SEA moved for reconsideration and rehearing relative to the composition of the bargaining unit established by Decision No. 90-109 and, in the case of the State, the certification of the Troopers as the bargaining agent. The PELRB reviewed and denied both motions for reconsideration, as reflected in Decision No. 90-123 dated November 15, 1990. Thereafter, the Department of Safety, Division of State Police appealed to the New Hampshire Supreme Court. The Court accepted the case and issued a decision on July 15, 1992, stating that the PELRB's "written decision does not include specific findings of fact sufficient to support its conclusion that sergeants should be included in the bargaining unit." The Court then vacated and remanded the case to the PELRB "for proceedings at which it may further consider this issue." It is from that remand that we supplement our previous findings in Decision No. 90-109.

FINDINGS OF FACT

1. The Division of State Police is organized with 179 troopers, 29 corporals, 31 sergeants, 11 lieutenants, two captains, three majors and one colonel. (T-5) There are six field troops each of which is responsible for a given geographic area and each of which is overseen by a lieutenant who is considered to be a commissioned officer. (T-6) In addition to the six field troops, there is a support service bureau and an investigative services bureau.
2. Lieutenants are directly responsible for the operations of each field troop and the mission of the state police within that geographical area. (T-6) These lieutenants are considered to be the equivalent to a chief of police for a given geographical area of responsibility. (T-8) Sergeants are non-commissioned officers and some are direct assistants to lieutenants who are troop commanders. (T-8). Sergeants are directly accountable to the troop commander (lieutenant) for any action(s) which the sergeant may take relative to the operational effectiveness of the troop. (T-24) These lieutenants work predominately Monday through Friday. In the lieutenant's absence, a sergeant would act in his capacity whether due to unavailability, days off, weekends, or an extended absence. (T-9)

3. Corporals are non-commissioned officers (T-8) of the state police and are included in the bargaining unit notwithstanding that management believes (T-7) that they are the first supervisory rank.
4. State Police are controlled by a centralized personnel system. Therefore, sergeants (as is the case with corporals, lieutenants and captains) cannot hire or fire personnel. (T-7, 11) While a sergeant may recommend formal disciplinary action of a trooper to his superiors, he is limited to an "on the spot" remedy of counseling.
5. It is the lieutenant, not the sergeant, who schedules personnel, assigns patrol areas within the troop, approves leave requests, evaluates subordinates and deals directly with disciplinary matters or has the ultimate responsibilities for these functions to the extent they may have been delegated to a subordinate. (T-14,22)
6. Lieutenants, as commissioned officers and supervisors, are not paid overtime unless they work on their days off. Sergeants, as is the case with corporals and troopers, are paid overtime when they qualify for it by working beyond their assigned shift(s). (T-21) Unlike lieutenants, sergeants may rotate shifts (T-39) and cannot grant annual leave, sit on oral boards, or relieve subordinates from duty. (T-41,44)
7. All employees in the position of sergeant do not necessarily act in the capacity as direct assistants to troop commanders. (T-24) In the major crime unit, sergeants and corporals are field operatives, performing investigatory and case management functions because there is only one trooper assigned to that unit. (T-37)

DECISION AND ORDER

Upon completing our exhaustive review of the record, we are convinced that sergeants are much more aligned by job duties and functions with corporals and troopers than with lieutenants and other commissioned officers. Their so-called "supervisory duties" are not universal, involve only some employees within that rank and are limited either to exercise in the absence of a lieutenant or to subsequent review and ratification by him. Given the intermittent nature of their supervisory function and its contingent characteristics subject to additional review, sergeants cannot be

said to be vested with "the significant exercise of discretion" referenced in RSA 273-A:8 II to warrant their exclusion from the bargaining unit. Accordingly, we AFFIRM our decision of October 17, 1990 (Case No. 90-109) and the composition of the bargaining unit established thereby which included all sworn personnel of the state police up to and including the rank of sergeant.

So ordered.

Signed this 1st day of October, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Arthur Blanchette and Seymour Osman present and voting.